

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FANNIE M. LONG,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

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16-CV-877S  
14-CR-1S

ORDER

Petitioner, Fannie M. Long, acting *pro se*, filed a motion seeking relief pursuant to 28 U.S.C. § 2255 (Docket No. 80). By Order filed November 8, 2016, Petitioner was directed to complete a § 2255 Timeliness Response Form, because her motion appeared to be untimely. (Docket No. 82.)

In response to this Court's Order, Petitioner filed what is in essence a motion for reduction of sentence under 18 U.S.C. § 3582 (c)(2). (Docket No. 83.) Therein, Petitioner alleges that she is entitled to a reduction in her sentence according to "newly amended 3B1.2," because she played only a "minor role" in the offense conduct. (Docket No. 83.)

Because Petitioner seeks resentencing based on a change to the United States Sentencing Guidelines, her action is properly brought under 18 U.S.C. § 3582 (c)(2). It is the substance of an action, rather than its form, that governs. See *James v. Walsh*, 308 F.3d 162, 166 (2d Cir. 2002). Consequently, this Court will deem Plaintiff's § 2255 petition (Docket No. 80) withdrawn and will construe her response to this Court's Order (Docket No. 83) as a motion for reduction of sentence under 18 U.S.C. § 3582 (c)(2). The government will be directed to file a response.

Also pending before this Court is Plaintiff's motion for relief under Rule 60 (b) of the Federal Rules of Civil Procedure. (Docket No. 81.) The government will be directed to file a response to that motion as well.

IT HEREBY IS ORDERED, that Petitioner's Motion to Vacate under § 2255 (Docket No. 80) is deemed WITHDRAWN.

FURTHER, that the Clerk of Court is directed to terminate Docket Number 80 as a pending motion.

FURTHER, that Petitioner's Reply (Docket No. 83) is construed as a Motion for Reduction of Sentence under 18 U.S.C. § 3582 (c)(2).

FURTHER, that the Clerk of Court is directed to amend the docket to reflect that the document at Docket Number 83 is a pending Motion for Reduction of Sentence under 18 U.S.C. § 3582 (c)(2).

FURTHER, that the government shall file a response to Plaintiff's Motion for Reduction of Sentence under 18 U.S.C. § 3582 (c)(2) (Docket No. 83) and her Motion for Relief under Rule 60 (b) (Docket No. 81) by April 21, 2017.

FURTHER, that Petitioner may file replies by May 5, 2017.

FURTHER, that the Clerk of Court is directed to CLOSE the civil action—16-CV-877S—which is now moot.

SO ORDERED.

/s/William M. Skretny  
William M. Skretny  
United States District Judge

DATED: March 22, 2017  
Buffalo, NY